

99-015

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October 19, 1999

Kentucky Registry of Election Finance
140 Walnut Street
Frankfort, KY 40601

Attention: General Counsel

Subject: Request for an Advisory Opinion

Dear General Counsel,

My name is Michael Lewis and I am a private and concerned citizen of the Commonwealth of Kentucky. I have walked platform handbills door for Gatewood Galbraith's Campaign, but have not contributed money to his campaign, and I am not an officer of his campaign. I have talked with Gatewood at several events and was working with him in Boone County against Vehicle Emissions testing prior to his candidacy. I have met with the candidate in both public and private and we have discussed his ideas for the future of Kentucky. I agree with many of his political positions.

KRS121A.030: "No slate of candidates for Governor and Lieutenant Governor shall knowingly accept any other campaign contribution during the twenty-eight (28) days immediately preceding a primary or regular election..."

KRS121.035: "Corporate contributions to aid candidates for public office prohibited"

KRS121.990 (Penalties) provides for anyone violating the current election laws to be "guilty of a Class D felony".

Section 1 of the Kentucky Constitution states: "All men are, by nature, free and equal, and have certain inherent and inalienable rights, among which may be reckoned:.... Forth: The right of freely communicating their thoughts and opinions."

Section 8 of the Kentucky Constitution states: "Printing presses shall be free to every person who undertakes to examine the proceeding of the General Assembly or any branch of government, and no law shall ever be made to restrain the right thereof. Every person may freely and fully speak, write and print on any subject, being responsible for the abuse of that liberty."

Section 15 of the Kentucky Constitution states: "No power to suspend laws shall be exercised unless by the General Assembly or its authority."

Section 26 of the Kentucky Constitution states: "To guard against transgression of the high powers which we have delegated, we Declare that every thing in this Bill of Rights is excepted out of the general powers of government, and shall forever remain inviolate; and all laws contrary thereto, or contrary to this Constitution, shall be void".

In light of the above cites, I would like an immediate "Advisory Opinion" regarding the following:

- 1) Are corporate or private contributions (Monetary or in kind) to the campaign of Gatewood Galbraith or any other candidate allowed after October 4th, 1999?
- 2) Are the Courier Journal and the Lexington Herald Leader registered and operating as corporations with the Secretary of States' Office?
- 3) Are they exempt from the current election laws and by what authority if so?

In anticipation of endorsements and other articles or political cartoons being published to affect the outcome of the up coming 1999 general election, it is my intent to print and distribute material to express my opinions and endorsements regarding the upcoming election (see two attached proposed 8 1/2 X 14 handbills opposing vehicle emissions testing). I intend to expressly advocate the political positions and election of Gatewood Galbraith. I estimate that the cost of such material and its distribution to well exceed \$1,000.00. Therefore, my request is for an "Advisory Opinion" addressing the following:

- 4) Is the cost of my printing and distributing such materials a violation of the current election law? If so, under what authority, as it relates to Section 1 and Section 8 of the Kentucky Constitution, does this constitute a violation the law?
- 5) If printing and distributing such materials is a violation, what are the penalties to me or to the Gatewood Galbraith campaign?
- 6) Are the current campaign laws, as they are related to Sections 1, 8, 15, and 26 of the Kentucky Constitution, to be considered void? If not, under what authority are these laws valid?

Please address the above 6 questions in the form of an "Advisory Opinion"

immediately, as time is of the essence, due to the election and the potential impact on the outcome. I realize that time is short. However, I intend to fully exercise my Constitutional rights as they relate to this election yet I do not intend to violate any valid laws. I look forward to your immediate reply.

If you need any additional information you may contact me at
502-454-3707

Sincerely,

Michael Lewis
2222 Dorothy Ave
Louisville, KY 40205

**Politicians weren't listening last year
when thousands of residents called Fiscal Court and demanded Repeal of Tailpipe Testing!**

This year candidates for Governor / Lt Governor are listening and oppose the test

I would like to tell you which candidate, but: KRS 121.990 provides that "any person who knowingly violates any provision of KRS 121.150 to 121.230...or KRS Chapter 121A, shall for each offense, be guilty of a Class D felony." Trouble is these election laws, which apply only to citizens and grassroots organizations, are so ambiguous I'm fearful of transgressing.



I would like to quote the candidates platform position on vehicle testing. However, the distribution or republication of campaign material produced or prepared by a candidates' campaign does not qualify as an independent expenditure. Distribution or republication of such material would be considered an in-kind contribution, not an independent expenditure. (KRS 121.015(6); KRS 121.150(1) and AO 95-012)

The commercial "free press" is exempt from election laws to insure "corporate freedom of speech"
Call and ask them to report how gubernatorial candidates stand on the issue?

WAVE-3: 561-4150, WHAS-11: 582-7220, WLKY-32: 893-3671, WDRB-41: 561-7707, CJ: 582-4011

Questionable Effects of Tailpipe Testing:

It Created a Private monopoly - After passing Vehicle Emissions Testing, Judge Mitch McConnell and the County Commissioners, turned over implementation and day to day operations to Gordon-Darby, Inc. This created a private monopoly and guaranteed 450,000 customers annually Private business has to make a profit. Couldn't county workers provide "the service" for less?

Government officials knew 30 years ago pollution would become a problem. But they did not discourage the automobile industry and encourage mass transit.

Politicians are the biggest promoters of clean air programs like tailpipe testing. Yet they continue to encourage building programs in densely populated urban areas:

Fills the Court System with the working poor - The Jefferson County Court System processes 16,000+ VET related court cases a year! Some politicians have requested a new and larger facility be built. Repealing the VET may eliminate the need for a courthouse building program and free the Sheriff's Department to serve Felony Warrants.

Bringing the UPS National Hub to Louisville - Takeoffs and landings are the most polluting aspects of air traffic. Clean air would have been preserved and new jobs secured by building it in an adjacent county. Airport Expansion added more pollution to Jefferson County than a punitive VET program can reclaim

Sets precedent for government to tell citizens how and when to spend after tax dollars. The \$8.25 is a fee and not a tax or is it a rose by another name?

In a candid moment, a County Judge Candidate admitted you could close Jefferson County borders to everything but bicycle traffic and there would still be days that would not meet federal air standards. Non-compliance days result when pollution from Canada in the winter or Mexico and other states in the summer gets trapped in the Ohio River Valley.

Automobile Manufacturers, Sales & Service are Beneficiaries - The owner of a garage says tightening standards are making it difficult or impossible to get his customers cars to pass. When I asked the garage owner how the offending cars drove, he said fine. Isn't that ironic? We used to take a car to the garage when it did not run well and replace it when we could afford to.

Only 6% of 450,000 vehicles tested fail the VET. It is questionable whether reducing pollutants emitted by a small percentage of cars improves the quality of air in Jefferson County sufficiently to warrant the \$3,564,000 and 216,000 hours (@ 30 min ea.) spent by the 94% who pass?

The VET is an example of Federal Government trampling States Rights - Politicians claim repeal will cost Jefferson County Federal Funding. Uncle Sam's rebate to the states that comply is blackmail and proves American citizens are paying too much in Federal Taxes! The 10th Amendment grants all powers to the States that are not specifically delegated to the Federal Government.

Air quality has improved because Japanese competition resulted in fuel-efficient cars and the Federal Government required manufacturers to incorporate catalytic converters. Improving technology and letting the individuals purchase it as they can afford to, is the only equitable way to reduce vehicular pollution.

The Law does not apply equally to all:

- 600,000 cars across the state pollute as much as 600,000 cars in 4 tested counties! Only Jefferson County and Northern Kentucky have Emissions Testing Programs.
- Tens of thousands of interstate vehicles pass through Jefferson County daily.
- Heavy trucks (corporations) are exempt from testing.

The VET program places the burden for improving air quality squarely on the shoulders of those least able to pay the poor, retired and young people starting out! Among the 6% who fail are unfortunates who cannot afford to repair or replace their vehicles. Nobody wants to drive and undependable or poorly running vehicle.

"The VET requirement places undue financial burdens on car owners in Jefferson, Kenton, Boone and Campbell Counties and will do nothing to improve the quality of the air. Its main impact is to create new wealth for corporations in the form of Emission Tax Credits which they may sell or trade to other corporations but not to individuals. We will put the interests of the citizens above the interest of corporate profits."

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Gatewood Galbraith and
Kathy Lyons

Vehicle Emissions Testing (VET)



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Call and ask the media to report how other candidates stand on the issue?
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